

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

KERRY DIMART ALLEN,  
Petitioner,

VS.

RICK THALER,  
Director, Texas Department of  
Criminal Justice, Correctional  
Institutions Division,  
Respondent.

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CIVIL ACTION NO. H-11-1676

**ORDER**

Kerry Dimart Allen seeks federal habeas corpus relief. Allen's petition raises a claim that trial counsel provided ineffective assistance in the investigation and presentation of mitigating evidence. Because Allen did not present that claim to the state courts, federal law would generally preclude consideration of its merits. 28 U.S.C. § 2254(b)(1)(A). Among other arguments, Allen asserts that this Court can reach the merits of his unexhausted claim under *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), a case allowing ineffective representation by state habeas counsel to overcome a federal procedural bar. The briefing to date has debated whether *Martinez* applies to capital cases originating in Texas state courts. On May 28, 2013, the Supreme Court held that *Martinez* applies to Texas. *Trevino v. Thaler*, \_\_\_ S. Ct. \_\_\_, 2013 WL 2300805 (May 28, 2013).

Accordingly, the parties may provide additional briefing concerning the application of *Martinez* and *Trevino* to this case. Allen will provide any briefing on the *Martinez/Trevino* issue within 30 days from the entry of this Order. Respondent may file a reply within 30 days thereafter.

Signed at Houston, Texas, on June 5, 2013.

  
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VANESSA D. GILMORE  
UNITED STATES DISTRICT JUDGE